

August 2, 2021

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Docket No. 3:16-md-2738-FLW-LHG

IN RE:

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| JOHNSON & JOHNSON TALCUM | STATUS CONFERENCE VIA |
| POWDER PRODUCTS MARKETING, | REMOTE ZOOM |
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* * * *

MONDAY, AUGUST 2, 2021

* * * *

BEFORE: SPECIAL MASTER JOEL SCHNEIDER, USMJ, RETIRED
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August 2, 2021

Page 2

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August 2, 2021

Page 6

1 SPECIAL MASTER SCHNEIDER: This is
2 Special Master Schneider. Thank you for getting on
3 the line, everybody.

4 There were two main issues I wanted to
5 discuss during this Zoom call, but while we're
6 together, if there are any other issues, feel free to
7 raise them.

8 One was a follow-up to the July 26th
9 opinion and order dealing with the privilege dispute
10 in the MDL. Obviously, I know that we're only
11 addressing a, quote/unquote, representative sample of
12 the documents and we left open for a future date what
13 was going to happen to the rest of the documents, so
14 hopefully we have some direction on that.

15 And then I just wanted to clarify with
16 Chris Placitella the spoliation motion, whether there
17 is going to be an amendment. If so, let's get a date
18 and then we'll schedule oral argument. If not, we'll
19 just schedule oral argument.

20 So why don't we deal with the first
21 issue, the privilege issue. I guess if I had to do
22 this again, I would have moved the oral argument back
23 a little bit because, I don't know, has J&J produced
24 any documents in response to the order?

25 MR. BERNARDO: Your Honor, so we just

August 2, 2021

Page 7

1 had a call with plaintiffs' counsel to kind of go
2 through where we are in relation to the order. And
3 if that would be okay, I think that might be helpful
4 to your Honor for me to walk you through what I told
5 plaintiffs' counsel --

6 SPECIAL MASTER SCHNEIDER: Sure.

7 MR. BERNARDO: -- because I think it
8 will answer the question you're raising, plus some
9 others.

10 Essentially, there are only a very
11 small number we wish to take some further action
12 with, and I'll get to that in a minute. While
13 respectfully we obviously may disagree with your
14 Honor, we appreciate your rulings and we're obliged
15 to be as conservative as possible in terms of
16 deciding whether we needed to address any of them
17 further by way of appeal or otherwise.

18 So just to go into a little bit of
19 detail, and plaintiffs have these numbers, there were
20 three documents, your Honor, numbers 46, 56 and 99
21 that you reserved on. And first, we don't believe
22 any kind of waiver can result from producing these
23 documents. And Mr. O'Shaughnessy, as you may recall,
24 was already deposed about these binders that are
25 referenced in them, so rather than take more of your

August 2, 2021

Page 8

1 time, your Honor, to sort through the issues in the
2 spirit of compromise and to try to move this along,
3 we will produce those. So we're going to give those
4 to the plaintiffs. So you can take those off your
5 list of having to do anything further with. Again,
6 they were 46, 56 and --

7 SPECIAL MASTER SCHNEIDER: But my big
8 question about those documents, I wasn't so concerned
9 about those documents, they're pretty
10 nonconsequential, but those documents refer to these
11 five binders.

12 MR. BERNARDO: Um-hum.

13 SPECIAL MASTER SCHNEIDER: And I don't
14 know what those binders are. It sounds like those
15 binders could be important. It sounds like I'm
16 not -- I don't know. It sounds like they may just be
17 historical documents. And then I saw in the
18 transcript that there had been some discussion about
19 them before, so I didn't know if there was a prior
20 ruling regarding those underlying documents and
21 that's why I reserved on that issue.

22 MR. BERNARDO: Fair enough, your Honor.
23 And just to address that, those documents have
24 been -- or those binders have probably been the
25 subject of more back and forth with plaintiffs

August 2, 2021

Page 9

1 because they're referenced in so many different
2 internal documents in different ways. And
3 coincidentally, Mr. Placitella and I are discussing
4 them again because he raised some other documents.
5 But the bottom line is plaintiffs have the five
6 binders, they've had them for a good period of time.
7 As I said, they're just referred to in different ways
8 in different documents. So I don't think there is
9 anything further on those.

10 SPECIAL MASTER SCHNEIDER: Terrific.

11 MR. BERNARDO: That's what I thought
12 you would want to hear.

13 The next category, your Honor, I'm
14 going to give it a very top line and Ms. Miller will
15 chime in with additional information, if appropriate,
16 now.

17 These are the so-called patent
18 documents, your Honor. And there are five of them.
19 And let me just give the numbers for the record so
20 you have them: 51, 52, 53 and 106 -- I'm sorry, 106
21 and 126.

22 And again, your Honor, these are five
23 that we went back and forth on whether or not to
24 appeal them, but it's our read of your Honor's order
25 that you are really overruling our claim not because

August 2, 2021

Page 10

1 of the legal issues that impact whether in certain
2 instances patents can be privileged information, but
3 because of our, I'll say, failure in your Honor's
4 view to substantiate them with respect to those
5 particular documents. And that being the case, as I
6 think we represented to your Honor in camera, or
7 maybe on the record, I don't recall, the substance of
8 them is already, you know, in plaintiffs' hands.
9 We're not really concerned about the substance or
10 maintaining that. But as long as your Honor is
11 agreeable that somehow we wouldn't be waiving our
12 arguments with respect to other patent documents,
13 again in the spirit of compromise, we'll provide
14 them.

15 But we also want to discuss with your
16 Honor, either now or at a later time as other ones
17 might get challenged, what we might do to
18 substantiate our claims with documents that fall into
19 this category. Because obviously, it becomes very
20 challenging when the authors and the recipients of
21 the documents are either deceased or no longer
22 available to the company. We have some ideas and we
23 can defer on those, but as long as your Honor is in
24 agreement with how I characterized your ruling, in
25 other words, it's sort of a failure to substantiate

August 2, 2021

Page 11

1 versus a disagreement on the law, we're willing, in
2 the spirit of compromise, to provide those five as
3 well.

4 SPECIAL MASTER SCHNEIDER: I think I
5 can give you some comfort on that issue because I do
6 recall that there was at least one patent document,
7 and offhand I don't know the number, where it was
8 explicitly clear that it was a request for legal
9 advice and I didn't direct that that document be
10 produced. Only with regard to those instances where
11 I did not think there was any evidence, either
12 explicit or implicit, to indicate there was a request
13 for legal advice was the privilege assertion
14 overruled. So I think you're right, it was just an
15 evidentiary issue that I didn't feel that J&J
16 satisfied its burden of proof as to a request for
17 legal advice.

18 I wish I knew the number of that other
19 document offhand, but someone in your team, I'm sure,
20 knows what it is. But if I recall correctly, it was
21 pretty clear in that one document that there was that
22 request for legal advice, which didn't pertain to the
23 other documents. And it was just as likely they were
24 prepared in the normal course of business, so that's
25 why I ruled like I did.

August 2, 2021

Page 12

1 MR. BERNARDO: Understood, your Honor.

2 And, Jessica, anything at this point to
3 add with respect to those?

4 MS. MILLER: No.

5 MR. BERNARDO: Okay. Let me move on to
6 the next category -- so to be clear, your Honor, we
7 will provide 51, 52, 53, 106 and 126 on to
8 plaintiffs.

9 There are five documents, and I hope I
10 have these number right, I believe I do, I
11 coordinated with Mr. Fine in advance of this call.
12 60, 61, 72, 103 and 108. Those --

13 SPECIAL MASTER SCHNEIDER: Can I go
14 back one second? I'm sorry, counsel.

15 MR. BERNARDO: Sure.

16 SPECIAL MASTER SCHNEIDER: Sort of to
17 close the loop.

18 I don't think it's appropriate for me
19 to tell J&J how to satisfy its burden of proof. If
20 the issue ever comes before me again on this patent
21 issue, I'll consider whatever it submits, but I don't
22 think it's my role to tell J&J how to satisfy its
23 burden. There are a lot of smart people working for
24 J&J, a lot smarter than me, and they should be able
25 to figure it out. In no way, shape or form can I say

August 2, 2021

Page 13

1 because the author or recipient are dead that J&J
2 can't satisfy its burden. Obviously, I'm not going
3 to rule that way. So I just leave it to J&J to
4 submit the strongest proofs that it can in support of
5 its position.

6 But I don't feel comfortable telling
7 J&J what to do because that's not my role. I'll
8 consider whatever J&J gives me.

9 MR. BERNARDO: Fair enough, your Honor.
10 And I didn't intend to suggest that we were going to
11 ask your Honor to tell us, but rather we were going
12 to sort of explain some ideas we had. But I take
13 your point, and if they come up, we'll, as you say,
14 give it our best, which will be different than how we
15 did it this time and hopefully that will persuade
16 your Honor.

17 All right. Going to the other ones
18 that I was enumerating, 60, 61, 72, 103 and 108.
19 Your Honor, these are the only -- Jessica, I'm sorry,
20 were you about to say something?

21 MS. MILLER: I just want to make clear,
22 Rich, that 103 is two different memos. A memo and
23 then an attachment that's also a memo.

24 MR. BERNARDO: Thank you, Jessica. I
25 didn't have that in front of me.

August 2, 2021

Page 14

1 So those, your Honor, are the five, or
2 six with the attachment, that our judgment was that
3 we would like to appeal. Having said that, we also
4 just want to be as efficient as possible. And to be
5 perfectly candid, your Honor, the reason we focused
6 on those is we felt as if the outcome of those was
7 inconsistent with your Honor's written opinion and
8 some of the points that were made. And we're
9 concerned that perhaps your Honor may have overlooked
10 certain facts in them which we thought was an
11 appropriate thing for our motion for reconsideration.
12 We didn't want to just make that, we really wanted to
13 ask you if that would be something that you would
14 consider in lieu of, you know, taking the next step
15 and appealing, for us to point out how we believe
16 that they're inconsistent. And you're nodding --

17 SPECIAL MASTER SCHNEIDER: No, I'm
18 nodding that if you think there is something that I
19 overlooked, I'm happy to look at it. I'm happy to
20 look at it and if I overlooked something, I'm not
21 going to hide it, I'll acknowledge it.

22 You know, I'll be perfectly candid with
23 you, my general impression of all of these documents,
24 I don't know the case like you guys know them and you
25 gals know them, but I certainly didn't see any

August 2, 2021

Page 15

1 smoking guns in here. I didn't see anything that's
2 not cumulative of what I've already seen in the case,
3 and I've only seen a smidgen of the case. And I
4 personally think your resources can be devoted in a
5 better fashion than going after these documents and
6 the PR documents, but if that's what you want to do,
7 that's fine.

8 You know, you've heard this from me
9 before, is the juice worth the squeeze? You're
10 fighting over documents that are inconsequential in
11 my view.

12 MR. BERNARDO: Your Honor, I wish
13 that -- we completely agree. And we appreciate the
14 comment you made, I believe, in a footnote that you
15 felt as if these were -- you know, these decisions
16 were made or these withholdings were made in good
17 faith.

18 The struggle we always have, your
19 Honor, is purely and simply waiver and, you know,
20 want to avoid -- we recognize that within this case
21 if some other documents were to come before your
22 Honor, you wouldn't say that there was waiver, but I
23 think as your Honor knows, this litigation is much
24 broader than the group of people on this call in this
25 MDL, so we're always just very concerned about that.

August 2, 2021

Page 16

1 So it really isn't a matter of anything in those
2 documents. I mean, to be candid, I mean, they're
3 probably the most innocuous, who cares substance, but
4 it's really making sure that we could apply the
5 rulings your Honor made consistently across in the
6 withholding of other documents or disclosing other
7 documents consistently. That's really why we're
8 doing this. It's not out of any kind of issue with
9 respect to the these particular documents, it's
10 really because of the broader issues of, you know,
11 proceeding on a forward-going basis and re-reviewing
12 the remaining documents that we wanted to do that.

13 So maybe reconsideration is the wrong
14 phrase and maybe it's clarification, but we just
15 thought rather than appeal them, Judge Schneider, it
16 made some practical sense to address with you in a
17 short letter of submission, which I think -- and
18 Jessica and I haven't really had the chance to
19 discuss this at length, I think it would probably
20 need to be an in camera submission because what we
21 would be doing is explaining -- obviously, we would
22 be getting down to brass tacks and explaining the
23 details of the documents.

24 SPECIAL MASTER SCHNEIDER: I'll
25 definitely consider it.

August 2, 2021

Page 17

1 Again, Judge Wolfson has so many
2 important issues to deal with and to me this is
3 fighting over nothing. And you're all -- you're very
4 sophisticated, you're very smart, but, you know, if
5 J&J starts filing motions for reconsideration and
6 appeals, plaintiffs might do the same thing. And I
7 didn't keep a score card on who won or who lost this
8 motion, but my guess is J&J is pretty happy with how
9 it turned out. Maybe the next one won't be. But if
10 J&J starts appealing and filing motions for
11 reconsideration, plaintiffs might do the same thing.
12 Is that what you want? Just something to consider.

13 But you're more than welcome to file
14 that motion, letter request. I'm happy to consider
15 it and I'll rule promptly on it.

16 MR. BERNARDO: Thank you, your Honor.
17 And we will -- Jessica, were you going to say
18 something?

19 No.

20 Thank you, your Honor. And we will
21 consider it. I understand your words and we
22 certainly consider those. Again, we're just trying
23 to make sure that as we proceed forward, we're doing
24 things consistently and I think perhaps this guidance
25 might help us.

August 2, 2021

Page 18

1 SPECIAL MASTER SCHNEIDER: No problem.
2 When do you think you're going to file
3 that?

4 MR. BERNARDO: Jessica?

5 MS. MILLER: Friday?

6 SPECIAL MASTER SCHNEIDER: How about
7 Monday so you don't -- there is no rush. I mean, you
8 can -- it's not a complicated issue, I don't want to
9 make people work overnight.

10 Jessica, if you think Friday is fine or
11 if you want more time, that's fine too.

12 MS. MILLER: Friday is fine.

13 SPECIAL MASTER SCHNEIDER: You got it.

14 MR. BERNARDO: So those are the I'll
15 sort of say nitty points about the documents from a
16 big picture perspective, your Honor. And we just --
17 I just told plaintiffs this a short time ago, we're
18 on track to provide to them after this call or this
19 evening the documents, and we're going to provide
20 them in real time to Mr. Block as well, so I don't
21 get emails and run cross hairs with that. So we'll
22 downgrade the ones that your honor ruled on and we'll
23 provide them to plaintiffs.

24 And also, your Honor, just to clarify,
25 that will be in our letter to plaintiffs. We already

August 2, 2021

Page 19

1 did our homework on those other issues that you
2 raised where you asked us to confirm that certain
3 documents had already been produced or that certain
4 versions of things had been produced, and we'll
5 itemize all of that in our letter as well. But we're
6 very comfortable we've done that work as well. I
7 think there may be one submission of a photograph of
8 the Johnson Baby Powder because plaintiffs don't have
9 enough pictures of the bottles of Johnson's Baby
10 Powder.

11 (Laughter)

12 MR. BERNARDO: But the exact document
13 may not have already been produced, so we'll produce
14 that as well.

15 Then, as far as moving forward, what we
16 thought made the most sense rather than have a lot of
17 discussions about it, is we're in the process of
18 going through the remaining -- I think there is about
19 16 or 17 hundred documents, your Honor, to apply what
20 we believe are the principles that your Honor
21 enumerated in your opinion as well as the rulings to
22 the remainder of the documents. And we think it
23 makes most sense for us just do that, provide them to
24 plaintiffs in a list and we give them the documents
25 and then we can meet and confer with them and maybe

August 2, 2021

Page 20

1 put time on the calendar if there are issues further
2 to raise with your Honor.

3 Based on your Honor's ruling, we're not
4 anticipating these to be a very large number, just
5 given the nature of your ruling. But we'll do that.
6 And we think we can get that done in a couple of
7 weeks. And we'll follow up with plaintiffs.

8 So that's my report in relation to your
9 order and with respect to privileged documents as
10 well.

11 SPECIAL MASTER SCHNEIDER: So we'll get
12 the letter from Jessica on Friday and I won't do
13 anything further until I hear from you with regard to
14 the rest of the challenged documents.

15 That's great.

16 MS. MILLER: And your Honor, my plan
17 was to submit a redacted version that would be shared
18 with plaintiffs and then an unredacted version in
19 camera.

20 Is that okay?

21 SPECIAL MASTER SCHNEIDER: Yes, that's
22 okay with me. You can email to it me, Jessica.

23 MS. MILLER: Okay.

24 SPECIAL MASTER SCHNEIDER: Okay. We're
25 done with that.

August 2, 2021

Page 21

1 And just getting to the spoliation
2 motion, Chris. One of the last times we spoke, you
3 indicated that you may want to make an amendment. I
4 think it makes sense if you're going to make the
5 amendment, make it, and I'll give you leave to do it
6 so we can just decide it once rather than multiple
7 times.

8 MR. BERNARDO: And, your Honor, just
9 for clarification because you've referred to it as a
10 spoliation motion. I just want to make sure I'm
11 following. My understanding was that it was a motion
12 for amended complaint to add --

13 SPECIAL MASTER SCHNEIDER: That's what
14 I meant.

15 MR. BERNARDO: Fair enough.

16 SPECIAL MASTER SCHNEIDER: That's what
17 I meant.

18 MR. BERNARDO: I just wanted to make
19 sure I didn't miss a motion.

20 SPECIAL MASTER SCHNEIDER: You're
21 correct, Rich. You're a hundred percent correct.
22 It's a motion to amend dealing with a spoliation
23 issue.

24 MR. PLACITELLA: So a couple of things.
25 I don't really anticipate that the briefing will

August 2, 2021

Page 22

1 change. There might be a little tweak in the oral
2 argument on the motion. What we would amend is
3 basically the proposed complaint to take into
4 account, you know, facts that have been disclosed
5 since the original filing of the motion. And some of
6 that may be dependent on the subpoenas that we're
7 still working through.

8 I know that Rich has indicated that
9 they're moving to quash one of the subpoenas in its
10 entirety. The other, we are trying to work through
11 the issues to see if a deposition is actually
12 necessary versus some type of certified statement as
13 to the location or non-existence of the documents in
14 lieu of a deposition. So I feel like we're a couple,
15 three weeks away from being able to give a final
16 amended complaint, but I don't really see the
17 briefing changing or I think the issues have changed.

18 SPECIAL MASTER SCHNEIDER: You tell me,
19 Chris, can we say if you're going to submit a
20 proposed amended complaint, do it by September 1?

21 Or the day after Labor Day, the day
22 after Labor Day.

23 MR. PLACITELLA: I guess that depends
24 on how the subpoenas get resolved. Because some of
25 the information we would want would be the product

August 2, 2021

Page 23

1 of -- or pinning down some of the information that's
2 in the subpoenas.

3 SPECIAL MASTER SCHNEIDER: Yeah, but we
4 can't keep it open infinitum. Why don't we say
5 September 7 -- well, September 8, the Wednesday after
6 Labor Day and this way I can schedule argument in mid
7 September.

8 MR. PLACITELLA: Okay. Could I indulge
9 the court for the 10th only because my daughter is
10 getting married the weekend before and --

11 SPECIAL MASTER SCHNEIDER: You got it.
12 You got it.

13 MR. PLACITELLA: -- my world here will
14 be upside down that weekend.

15 Thank you.

16 SPECIAL MASTER SCHNEIDER:
17 Congratulations.

18 MR. PLACITELLA: Thank you.

19 SPECIAL MASTER SCHNEIDER: And then
20 we'll schedule oral argument after that.

21 And I think you're right, if you want
22 to submit any brief with the proposed amendment, do
23 it by the 10th. And defendants, if there is going to
24 be any additional briefing, submit something by, say,
25 the 17th. And then right after that we'll have oral

August 2, 2021

Page 24

1 argument.

2 MR. BERNARDO: That schedule works,
3 your Honor. And congratulations, Chris.

4 MR. PLACITELLA: Thanks.

5 MR. BERNARDO: But I do want to note
6 just for the record, without getting into a side
7 discussion of this, your Honor, is we do disagree
8 quite strongly with the fact that there is anything
9 to add to this. These subpoenas, which are 30(b)(6)
10 deposition notices, are basically rehashing issues.
11 In fact, I think my first letter, and I know Chris
12 may disagree, my first letter to Mr. Placitella was
13 pointing him to prior communications I've had about
14 these issues. They're age old issues that have been
15 coming up in depositions time and time again.

16 MR. PLACITELLA: I know, but I read --

17 MR. BERNARDO: Let me finish. Let me
18 finish, Chris.

19 So I really just wanted to do it, I
20 didn't want to get into a back and forth, I just want
21 to note for the record that we object to the need for
22 that because I think these are issues that have come
23 up before and if they haven't come up before, they
24 should have come up before because they're based upon
25 productions of documents and issues that go back

August 2, 2021

Page 25

1 several years. I just want to note that for the
2 record.

3 And Now you can go, Chris.

4 MR. PLACITELLA: I disagree.

5 (Laughter)

6 SPECIAL MASTER SCHNEIDER: Chris, can I
7 ask you a question? I didn't study the motion to
8 amend in detail, but are there only five states that
9 you're seeking to assert this claim under?

10 MR. PLACITELLA: Well, there are five
11 states in addition to New Jersey and I don't know
12 what cases, frankly, are sitting in the MDL that
13 should have been filed in New Jersey and are still
14 there. So putting the New Jersey piece aside, there
15 are five states with independent causes of action
16 that we've been able to analyze. That doesn't mean,
17 however, that the facts would not give rise to an
18 adverse inference in the context of any trial, you
19 know, over and above a separate cause of action.

20 SPECIAL MASTER SCHNEIDER: Do I have to
21 decide as to each of the five states whether you
22 pleaded an appropriate cause of action?

23 MR. PLACITELLA: I really don't think
24 so. I think it's kind of germane to all. I mean
25 they -- J&J may have a different perspective on that,

August 2, 2021

Page 26

1 but it doesn't feel like that's going to be
2 necessary. And their arguments that they're made in
3 opposition the first time around really don't go --
4 as I recall, don't even go to those issues in
5 particular. Although now you might have given them
6 something to think about.

7 SPECIAL MASTER SCHNEIDER: Another
8 question.

9 Again, I didn't study those papers in
10 detail, but I know that the defendants attached
11 opinions where -- at least two opinions I remember
12 skimming through where the courts denied, I don't
13 remember if it was a motion for summary judgement or
14 not, but I know that the request to assert the claim
15 was denied. Are there any decisions, when I read
16 your papers, where courts have allowed this sort of
17 amendment or cause of action just to be pleaded
18 before summary judgement?

19 MR. PLACITELLA: There is a talc
20 decision on point from the Third Circuit Court of
21 Appeals, Williams vs. BASF, by Judge Fuentes that
22 lays out the causes of action, not on the state law
23 that is applicable for the other five states based on
24 New Jersey law, but on analogous facts.

25 MR. BERNARDO: And, your Honor, I just

August 2, 2021

Page 27

1 want to point out that I think the words "on point"
2 have rarely been so loosely used, as I'm sure
3 these -- we've said in our papers, this decision is
4 not at all on point, it has nothing to do with
5 Johnson & Johnson, the facts are so dissimilar, but I
6 just want to point out that --

7 MR. PLACITELLA: It actually has
8 everything to do with Johnson & Johnson, but we'll
9 leave that for the brief.

10 MR. BERNARDO: I just want to
11 point out, your Honor, and this is what I meant
12 before, in terms of the fact that these are not new
13 allegations. And the reason I know is that I've
14 personally argued this motion before I can't even
15 count the numbers of judges including Judge Viscomi.
16 And it has been routinely denied based upon exactly
17 the same factual assertions (indiscernible
18 crosstalk).

19 MR. PLACITELLA: I would say --

20 MR. BERNARDO: Judge Visic in Kentucky,
21 Judge, whose name I've now forgotten, in the
22 Hirschberg case, this comes up time and time again.
23 But we'll go through all of that.

24 But I strongly disagree with any
25 applicability, as your Honor can see when you read

August 2, 2021

Page 28

1 the papers.

2 MR. PLACITELLA: Well, I think this
3 record is quite different, but we'll just say I
4 disagree.

5 SPECIAL MASTER SCHNEIDER: Okay.

6 MR. BERNARDO: Your Honor, there is one
7 more thing I just want to raise and this relates to
8 these. And I just want to talk about the timing
9 issue.

10 So plaintiffs have served two
11 additional 30(b)(6) deposition notices, one that I
12 would just call a potpourri or hodgepodge of a
13 variety of different issues. While we disagree with
14 it in putting up a witness and having it come at this
15 stage of the proceeding when it's dealing with issues
16 that were ripe several years ago, in the category of
17 life-is-short-and-why-argue-when-you-don't-have-to,
18 I've been working cooperatively with Mr. Placitella,
19 we'll try to get him some stipulations if we need to,
20 but I think we can -- I think Chris and I would agree
21 that we're likely to be able to address that without
22 your Honor's input.

23 There is a second one, and I won't get
24 into it, but suffice it to say it relates to an issue
25 I believe your Honor heard at Mr. O'Shaughnessy's

August 2, 2021

Page 29

1 deposition about when documents were produced in
2 other lawsuits, and things like that, that we
3 disagree is appropriate subject matter for discovery
4 and we would like to make a motion to quash. I would
5 think, your Honor, we can do that in an informal
6 letter brief to your Honor, but I just want to make
7 sure that that's the right way to proceed. And we're
8 working on that and can get that to your Honor
9 sometime next week.

10 SPECIAL MASTER SCHNEIDER: Is this a
11 motion to quash the 30(b)(6) notice?

12 MR. BERNARDO: Correct.

13 SPECIAL MASTER SCHNEIDER: And what
14 were the subject matters in that --

15 MR. BERNARDO: It's really -- it's just
16 one subject matter that's divided into a bunch of
17 different categories, but it's essentially, you know,
18 tell me when and in what particular lawsuit going
19 back over 30 years you first produced each of these
20 documents. I mean that's essentially what it is.

21 SPECIAL MASTER SCHNEIDER: And your
22 argument is going to be proportionality?

23 MR. BERNARDO: Proportionality,
24 relevance, burden, yes. And we'll lay it out for
25 your Honor, I just want to have a mechanism to do

August 2, 2021

Page 30

1 that so we don't --

2 SPECIAL MASTER SCHNEIDER: I don't need
3 a formal motion, that's for sure.

4 MR. BERNARDO: That's what we thought.

5 SPECIAL MASTER SCHNEIDER: I'd rather
6 you submit a letter brief and, plaintiff, the
7 opposition, if you can agree on a briefing schedule,
8 whatever you agree to that's reasonable is fine with
9 me.

10 MR. BERNARDO: Perfect. I'll work that
11 out with Chris, then. We just wanted to make sure
12 your Honor was --

13 SPECIAL MASTER SCHNEIDER: Yes. I
14 would rather not have a formal motion, I would rather
15 do by letter brief. It gets done quicker and easier
16 that way.

17 MR. BERNARDO: Perfect. We'll proceed
18 that way and I'll coordinate with Chris.

19 SPECIAL MASTER SCHNEIDER: Okay. So I
20 think we've covered the issues --

21 MR. PLACITELLA: That's fine.

22 SPECIAL MASTER SCHNEIDER: -- to raise.
23 Are there any other issues anybody
24 wants to raise?

25 I'm trying to think.

August 2, 2021

Page 31

1 The only thing I'm waiting for now that
2 I think I have on my plate is, Rich, we talked about
3 you'll get me a date for that oral argument in the
4 state case. That ruling is going to come out very
5 soon, right after the oral argument. It's the
6 same -- almost identical, there aren't really any
7 legal issues in that motion that we haven't seen in
8 the first motion, so I think you're going to get the
9 same rulings. Most of the documents in that case --
10 those two cases are the three PR firms. So I think
11 that's it.

12 MR. BERNARDO: Great.

13 SPECIAL MASTER SCHNEIDER: Okay. I
14 thank you all.

15 Thank you, Theresa, as always.

16 MS. KUGLER: Thank you, Judge.

17 SPECIAL MASTER SCHNEIDER: Have a good
18 day and we'll see everybody.

19 (Hearing concluded)

20

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August 2, 2021

Page 32

C E R T I F I C A T E

I, Theresa Mastroianni Kugler, a Notary Public
and Certified Shorthand Reporter of the State of New
Jersey, do hereby certify that the foregoing is a
true and accurate transcript of the testimony as
taken stenographically by and before me at the time,
place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a
relative nor employee nor attorney nor counsel of any
of the parties to this action, and that I am neither
a relative nor employee of such attorney or counsel,
and that I am not financially interested in the
action.

DocuSigned by:

Theresa Kugler

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Theresa Mastroianni Kugler, C.S.R.
Notary Public, State of New Jersey
My Commission Expires May 5, 2021
Certificate No. XI0857
Date: August 2, 2021

August 2, 2021

33

| | | | | |
|-------------------------|-------------------------|-------------------------|-------------------------|------------------------|
| A | analyze 25:16 | August 1:11 | big 8:7 18:16 | 10:19 12:6 |
| able 12:24 22:15 | answer 7:8 | 32:21 | binders 7:24 | 28:16 |
| 25:16 28:21 | anticipate 21:25 | author 13:1 | 8:11,14,15,24 | cause 25:19,22 |
| account 22:4 | anticipating | authors 10:20 | 9:6 | 26:17 |
| accurate 32:6 | 20:4 | available 10:22 | bit 6:23 7:18 | causes 25:15 |
| acknowledge | anybody 30:23 | AVENUE 3:22 | Block 18:20 | 26:22 |
| 14:21 | appeal 7:17 9:24 | 5:6 | bottles 19:9 | certain 10:1 |
| action 7:11 | 14:3 16:15 | avoid 15:20 | bottom 9:5 | 14:10 19:2,3 |
| 25:15,19,22 | appealing 14:15 | | BOX 3:16 | certainly 14:25 |
| 26:17,22 32:11 | 17:10 | B | brass 16:22 | 17:22 |
| 32:14 | appeals 17:6 | Baby 19:8,9 | brief 23:22 27:9 | Certificate |
| ADAM 5:5 | 26:21 | back 6:22 8:25 | 29:6 30:6,15 | 32:21 |
| add 12:3 21:12 | applicability | 9:23 12:14 | briefing 21:25 | certified 1:19 |
| 24:9 | 27:25 | 24:20,25 29:19 | 22:17 23:24 | 2:8 22:12 32:4 |
| addition 25:11 | applicable 26:23 | BANK 3:22 | 30:7 | certify 32:5,9 |
| additional 9:15 | apply 16:4 19:19 | BARR 4:1 | broader 15:24 | challenged |
| 23:24 28:11 | appreciate 7:14 | based 20:3 24:24 | 16:10 | 10:17 20:14 |
| address 7:16 | 15:13 | 26:23 27:16 | BUCHANAN | challenging |
| 8:23 16:16 | appropriate | BASF 26:21 | 4:1 | 10:20 |
| 28:21 | 9:15 12:18 | basically 22:3 | bunch 29:16 | chance 16:18 |
| addressing 6:11 | 14:11 25:22 | 24:10 | burden 11:16 | change 22:1 |
| advance 12:11 | 29:3 | basis 16:11 | 12:19,23 13:2 | changed 22:17 |
| adverse 25:18 | argued 27:14 | BAYLEN 4:2 | 29:24 | changing 22:17 |
| advice 11:9,13 | argument 6:18 | BEASLEY 3:15 | business 11:24 | characterized |
| 11:17,22 | 6:19,22 22:2 | BEISNER 5:4 | | 10:24 |
| age 24:14 | 23:6,20 24:1 | believe 7:21 | C | CHERRY 3:5 |
| ago 18:17 28:16 | 29:22 31:3,5 | 12:10 14:15 | C 3:1 32:1,1 | chime 9:15 |
| agree 15:13 | arguments | 15:14 19:20 | C.S.R 32:19 | Chris 6:16 21:2 |
| 28:20 30:7,8 | 10:12 26:2 | 28:25 | calendar 20:1 | 22:19 24:3,11 |
| agreeable 10:11 | ARPS 5:2 | BERMAN 4:7,7 | call 6:5 7:1 | 24:18 25:3,6 |
| agreement 10:24 | ASHCRAFT 3:9 | BERNARDO | 12:11 15:24 | 28:20 30:11,18 |
| ALABAMA | aside 25:14 | 5:2 6:25 7:7 | 18:18 28:12 | CHRISTOPH... |
| 3:17 | asked 19:2 | 8:12,22 9:11 | camera 10:6 | 3:21 4:2 |
| allegations | assert 25:9 | 12:1,5,15 13:9 | 16:20 20:19 | Circuit 26:20 |
| 27:13 | 26:14 | 13:24 15:12 | CAMPUS 4:14 | Civil 1:2 |
| ALLEN 3:15 | assertion 11:13 | 17:16 18:4,14 | candid 14:5,22 | claim 9:25 25:9 |
| allowed 26:16 | assertions 27:17 | 19:12 21:8,15 | 16:2 | 26:14 |
| amend 21:22 | attached 26:10 | 21:18 24:2,5 | card 17:7 | claims 10:18 |
| 22:2 25:8 | attachment | 24:17 26:25 | cares 16:3 | clarification |
| amended 21:12 | 13:23 14:2 | 27:10,20 28:6 | case 10:5 14:24 | 16:14 21:9 |
| 22:16,20 | attorney 32:10 | 29:12,15,23 | 15:2,3,20 | clarify 6:15 |
| amendment | 32:12 | 30:4,10,17 | 27:22 31:4,9 | 18:24 |
| 6:17 21:3,5 | ATTORNEYS | 31:12 | cases 25:12 | clear 11:8,21 |
| 23:22 26:17 | 3:7,13,19,25 | best 13:14 | 31:10 | 12:6 13:21 |
| analogous 26:24 | 4:5,11,17 5:8 | better 15:5 | categories 29:17 | close 12:17 |
| | Audubon 1:21 | BIDDLE 4:13 | category 9:13 | COHEN 3:21 |

August 2, 2021

34

| | | | | |
|--|--|--|---|--|
| <p>coincidentally 9:3 come 13:13 15:21 24:22,23 24:24 28:14 31:4 comes 12:20 27:22 comfort 11:5 comfortable 13:6 19:6 coming 24:15 commencing 2:12 comment 15:14 COMMERCE 3:16 Commission 32:20 Commonwealth 2:10 communicatio... 24:13 COMPANIES 4:18 5:9 company 10:22 complaint 21:12 22:3,16,20 completely 15:13 complicated 18:8 compromise 8:2 10:13 11:2 concerned 8:8 10:9 14:9 15:25 concluded 31:19 confer 19:25 CONFEREN... 1:5 confirm 19:2 congratulations 23:17 24:3 conservative 7:15</p> | <p>consider 12:21 13:8 14:14 16:25 17:12,14 17:21,22 consistently 16:5 16:7 17:24 CONSUMER 4:18,18 5:9,10 context 25:18 cooperatively 28:18 coordinate 30:18 coordinated 12:11 correct 21:21,21 29:12 correctly 11:20 counsel 7:1,5 12:14 32:10,12 count 27:15 couple 20:6 21:24 22:14 course 11:24 court 1:1,19 2:8 23:9 26:20 courts 26:12,16 covered 30:20 cplacitella@c... 3:24 cross 18:21 crosstalk 27:18 ctisi@levinla... 4:4 cumulative 15:2</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D 5:3 DANIEL 3:4 date 6:12,17 31:3 32:8,21 daughter 23:9 day 22:21,21,21 22:22 23:6 31:18 DC 3:11 5:6</p> | <p>dead 13:1 deal 6:20 17:2 dealing 6:9 21:22 28:15 deceased 10:21 decide 21:6 25:21 deciding 7:16 decision 26:20 27:3 decisions 15:15 26:15 DEFENDANT 4:17 5:8 defendants 23:23 26:10 defer 10:23 definitely 16:25 denied 26:12,15 27:16 dependent 22:6 depends 22:23 deposed 7:24 deposition 22:11 22:14 24:10 28:11 29:1 depositions 24:15 detail 7:19 25:8 26:10 details 16:23 devoted 15:4 different 9:1,2,7 9:8 13:14,22 25:25 28:3,13 29:17 direct 4:15 11:9 direction 6:14 disagree 7:13 24:7,12 25:4 27:24 28:4,13 29:3 disagreement 11:1 disclosed 22:4 disclosing 16:6</p> | <p>discovery 29:3 discuss 6:5 10:15 16:19 discussing 9:3 discussion 8:18 24:7 discussions 19:17 dispute 6:9 dissimilar 27:5 DISTRICT 1:1 1:1 divided 29:16 dlapinski@m... 3:7 Docket 1:2 document 11:6,9 11:19,21 19:12 documents 6:12 6:13,24 7:20 7:23 8:8,9,10 8:17,20,23 9:2 9:4,8,18 10:5 10:12,18,21 11:23 12:9 14:23 15:5,6 15:10,21 16:2 16:6,7,9,12,23 18:15,19 19:3 19:19,22,24 20:9,14 22:13 24:25 29:1,20 31:9 doing 16:8,21 17:23 downgrade 18:22 DRINKER 4:13 DRIVE 3:4</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>E 3:1,1 5:13,13 32:1,1 easier 30:15 EAST 3:4 efficient 14:4</p> | <p>either 10:16,21 11:11 email 20:22 emails 18:21 employee 32:10 32:12 entirety 22:10 enumerated 19:21 enumerating 13:18 ESQUIRE 3:4 3:10,15,21 4:2 4:7,14 5:2,3,4 5:5,15 essentially 7:10 29:17,20 evening 18:19 everybody 6:3 31:18 evidence 11:11 evidentiary 11:15 exact 19:12 exactly 27:16 Expires 32:20 explain 13:12 explaining 16:21 16:22 explicit 11:12 explicitly 11:8</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>F 32:1 fact 24:8,11 27:12 facts 14:10 22:4 25:17 26:24 27:5 factual 27:17 FAEGRE 4:13 failure 10:3,25 Fair 8:22 13:9 21:15 faith 15:17 fall 10:18</p> |
|--|--|--|---|--|

August 2, 2021

35

| | | | | |
|-------------------------|--------------------------|------------------------|------------------------|---------------------------|
| far 19:15 | 1:18 | GOODMAN | 24:3,7 26:25 | 11:10 |
| fashion 15:5 | forth 8:25 9:23 | 5:15 | 27:11,25 28:6 | intend 13:10 |
| FAX 3:6,18,24 | 24:20 32:8 | great 20:15 | 28:25 29:5,6,8 | interested 32:13 |
| 4:10,16 5:18 | forward 17:23 | 31:12 | 29:25 30:12 | internal 9:2 |
| feel 6:6 11:15 | 19:15 | group 15:24 | Honor's 9:24 | issue 6:21,21 |
| 13:6 22:14 | forward-going | guess 6:21 17:8 | 10:3 14:7 20:3 | 8:21 11:5,15 |
| 26:1 | 16:11 | 22:23 | 28:22 | 12:20,21 16:8 |
| felt 14:6 15:15 | frankly 25:12 | guidance 17:24 | hope 12:9 | 18:8 21:23 |
| fighting 15:10 | free 6:6 | guns 15:1 | hopefully 6:14 | 28:9,24 |
| 17:3 | Friday 18:5,10 | guys 14:24 | 13:15 | issues 6:4,6 8:1 |
| figure 12:25 | 18:12 20:12 | | Horse 1:20 | 10:1 16:10 |
| file 17:13 18:2 | front 13:25 | H | hundred 19:19 | 17:2 19:1 20:1 |
| filed 25:13 | Fuentes 26:21 | H 5:4 | 21:21 | 22:11,17 24:10 |
| filing 17:5,10 | further 7:11,17 | hairs 18:21 | I | 24:14,14,22,25 |
| 22:5 | 8:5 9:9 20:1,13 | hands 10:8 | ideas 10:22 | 26:4 28:13,15 |
| final 22:15 | 32:9 | happen 6:13 | 13:12 | 30:20,23 31:7 |
| financially | future 6:12 | happy 14:19,19 | identical 31:6 | itemize 19:5 |
| 32:13 | G | 17:8,14 | impact 10:1 | J |
| fine 5:5 12:11 | gals 14:25 | hear 9:12 20:13 | implicit 11:12 | J 5:5 |
| 15:7 18:10,11 | general 14:23 | heard 15:8 | important 8:15 | J&J 6:23 11:15 |
| 18:12 30:8,21 | GEREL 3:9 | 28:25 | 17:2 | 12:19,22,24 |
| finish 24:17,18 | germane 25:24 | Hearing 31:19 | impression | 13:1,3,7,8 17:5 |
| FIRM 3:15 | getting 6:2 16:22 | help 17:25 | 14:23 | 17:8,10 25:25 |
| firms 31:10 | 21:1 23:10 | helpful 7:3 | including 27:15 | Jersey 1:1,21 |
| first 6:20 7:21 | 24:6 | hereinbefore | inconsequential | 2:10 3:5,22 |
| 24:11,12 26:3 | give 8:3 9:14,19 | 32:8 | 15:10 | 4:15 25:11,13 |
| 29:19 31:8 | 11:5 13:14 | hide 14:21 | inconsistent | 25:14 26:24 |
| five 8:11 9:5,18 | 19:24 21:5 | HILL 3:5 | 14:7,16 | 32:5,20 |
| 9:22 11:2 12:9 | 22:15 25:17 | Hirschberg | independent | Jessica 5:3 12:2 |
| 14:1 25:8,10 | given 20:5 26:5 | 27:22 | 25:15 | 13:19,24 16:18 |
| 25:15,21 26:23 | gives 13:8 | historical 8:17 | indicate 11:12 | 17:17 18:4,10 |
| FLOM 5:2 | go 7:1,18 12:13 | hodgepodge | indicated 21:3 | 20:12,22 |
| FLOOR 5:16 | 24:25 25:3 | 28:12 | 22:8 | JOEL 1:14 |
| FLORHAM | 26:3,4 27:23 | homework 19:1 | indiscernible | JOHN 5:4 |
| 4:15 | going 6:13,17 | honor 6:25 7:4 | 27:17 | john.beisner... |
| FLORIDA 4:3 | 8:3 9:14 13:2 | 7:14,20 8:1,22 | indulge 23:8 | 5:7 |
| focused 14:5 | 13:10,11,17 | 9:13,18,22 | inference 25:18 | Johnson 1:5,5 |
| follow 20:7 | 14:21 15:5 | 10:6,10,16,23 | infinitum 23:4 | 4:17,17,17,17 |
| follow-up 6:8 | 17:17 18:2,19 | 12:1,6 13:9,11 | informal 29:5 | 4:18,18 5:9,9,9 |
| following 21:11 | 19:18 21:4 | 13:16,19 14:1 | information | 5:9,10,10 19:8 |
| footnote 15:14 | 22:19 23:23 | 14:5,9 15:12 | 9:15 10:2 | 27:5,5,8,8 |
| foregoing 32:5 | 26:1 29:18,22 | 15:19,22,23 | 22:25 23:1 | Johnson's 19:9 |
| forgotten 27:21 | 31:4,8 | 16:5 17:16,20 | innocuous 16:3 | jschneider@m... |
| form 12:25 | good 9:6 15:16 | 18:16,22,24 | input 28:22 | 1:14 |
| formal 30:3,14 | 31:17 | 19:19,20 20:2 | instances 10:2 | Judge 16:15 |
| FORMAROLI | | 20:16 21:8 | | |

August 2, 2021

36

| | | | | |
|---|--|--|---|--|
| 17:1 26:21 27:15,20,21 31:16 judgement 26:13,18 judges 27:15 judgment 14:2 juice 15:9 July 6:8 | lawsuit 29:18 lawsuits 29:2 lay 29:24 lays 26:22 lberman@lfsb... 4:11 leave 13:3 21:5 27:9 left 6:12 legal 10:1 11:8 11:13,17,22 31:7 LEIGH 3:15 leigh.odell@b... 3:18 length 16:19 let's 6:17 letter 16:17 17:14 18:25 19:5 20:12 24:11,12 29:6 30:6,15 LEVIN 4:1,7 LIABILITY 1:6 license 2:9 lieu 14:14 22:14 life-is-short-a... 28:17 line 6:3 9:5,14 list 8:5 19:24 litigation 1:6 15:23 little 6:23 7:18 22:1 LLC 3:3 LLP 3:9 4:7,13 5:2,15 location 22:13 long 10:10,23 longer 10:21 look 14:19,20 loop 12:17 loosely 27:2 lost 17:7 lot 12:23,24 19:16 | M M 3:21 4:14 main 6:4 maintaining 10:10 making 16:4 MAPLE 3:22 MARKET 5:16 MARKETING 1:5 married 23:10 Master 1:14 6:1 6:2 7:6 8:7,13 9:10 11:4 12:13,16 14:17 16:24 18:1,6 18:13 20:11,21 20:24 21:13,16 21:20 22:18 23:3,11,16,19 25:6,20 26:7 28:5 29:10,13 29:21 30:2,5 30:13,19,22 31:13,17 Mastroianni 1:18 2:8 32:3 32:19 matter 2:7 16:1 29:3,16 matters 29:14 McCRACKEN 5:15 MDL 6:10 15:25 25:12 MEAGHER 5:2 mean 16:2,2 18:7 25:16,24 29:20 meant 21:14,17 27:11 mechanism 29:25 meet 19:25 memo 13:22,23 | memos 13:22 MICHELLE 3:10 mid 23:6 Miller 5:3 9:14 12:4 13:21 18:5,12 20:16 20:23 minute 7:12 Monday 1:11 18:7 MONTGOM... 3:17 5:15 motion 6:16 14:11 17:8,14 21:2,10,11,19 21:22 22:2,5 25:7 26:13 27:14 29:4,11 30:3,14 31:7,8 motions 17:5,10 MOTLEY 3:3 MOUGEY 4:1 move 8:2 12:5 moved 6:22 moving 19:15 22:9 mparfitt@ash... 3:12 multiple 21:6 | 32:4,20 nitty 18:15 nodding 14:16 14:18 non-existence 22:13 nonconsequen... 8:10 normal 11:24 Notary 2:9 32:3 32:20 note 24:5,21 25:1 notice 29:11 notices 24:10 28:11 number 2:9 7:11 11:7,18 12:10 20:4 numbers 7:19 7:20 9:19 27:15 NW 3:10 5:6 |
| K K 3:10 keep 17:7 23:4 Kentucky 27:20 kind 7:1,22 16:8 25:24 knew 11:18 know 6:10,23 8:14,16,19 10:8 11:7 14:14,22,24,24 14:25 15:8,15 15:19 16:10 17:4 22:4,8 24:11,16 25:11 25:19 26:10,14 27:13 29:17 known 4:18 5:10 knows 11:20 15:23 Kugler 2:8 31:16 32:3,19 | L L 5:13,15 Labor 22:21,22 23:6 LAKE 3:4 LAPINSKI 3:4 large 20:4 Laughter 19:11 25:5 law 3:15 11:1 26:22,24 LAWRENCE 4:7 | N N 3:1 5:13 name 27:21 nature 20:5 necessary 22:12 26:2 need 16:20 24:21 28:19 30:2 needed 7:16 neither 32:9,11 new 1:1,21 2:10 3:5,22 4:15 5:6 25:11,13,14 26:24 27:12 | O O 5:13 O'BRIEN 4:1 O'DELL 3:15 O'Shaughnessy 7:23 O'Shaughness... 28:25 object 24:21 obliged 7:14 obviously 6:10 7:13 10:19 13:2 16:21 offhand 11:7,19 okay 7:3 12:5 20:20,22,23,24 23:8 28:5 30:19 31:13 old 24:14 once 21:6 ones 10:16 13:17 18:22 | |

August 2, 2021

37

| | | | | |
|--|---|--|--|---|
| open 6:12 23:4 opinion 6:9 14:7 19:21 opinions 26:11 26:11 opposition 26:3 30:7 oral 6:18,19,22 22:1 23:20,25 31:3,5 order 6:9,24 7:2 9:24 20:9 original 22:5 outcome 14:6 overlooked 14:9 14:19,20 overnight 18:9 overruled 11:14 overruling 9:25 | Perfect 30:10,17 perfectly 14:5 14:22 period 9:6 personally 15:4 27:14 perspective 18:16 25:25 persuade 13:15 pertain 11:22 PHILADELP... 4:9 5:17 photograph 19:7 phrase 16:14 picture 18:16 pictures 19:9 piece 25:14 Pike 1:20 pinning 23:1 place 32:8 Placitella 3:21 3:21 6:16 9:3 21:24 22:23 23:8,13,18 24:4,12,16 25:4,10,23 26:19 27:7,19 28:2,18 30:21 plaintiff 30:6 plaintiffs 3:7,13 3:19,25 4:5,11 7:19 8:4,25 9:5 12:8 17:6,11 18:17,23,25 19:8,24 20:7 20:18 28:10 plaintiffs' 7:1,5 10:8 plan 20:16 plate 31:2 pleaded 25:22 26:17 plus 7:8 PM 2:12 point 12:2 13:13 | 14:15 26:20 27:1,1,4,6,11 pointing 24:13 points 14:8 18:15 position 13:5 possible 7:15 14:4 potpourri 28:12 Powder 1:5 19:8 19:10 PR 15:6 31:10 practical 16:16 PRACTICES 1:6 prepared 11:24 pretty 8:9 11:21 17:8 principles 19:20 prior 8:19 24:13 privilege 6:9,21 11:13 privileged 10:2 20:9 probably 8:24 16:3,19 problem 18:1 proceed 17:23 29:7 30:17 proceeding 16:11 28:15 proceedings 2:6 process 19:17 PROCTOR 4:1 produce 8:3 19:13 produced 6:23 11:10 19:3,4 19:13 29:1,19 producing 7:22 product 22:25 productions 24:25 PRODUCTS 1:5 1:6 promptly 17:15 | proof 11:16 12:19 proofs 13:4 proportionality 29:22,23 proposed 22:3 22:20 23:22 provide 10:13 11:2 12:7 18:18,19,23 19:23 Public 2:9 32:3 32:20 purely 15:19 put 20:1 putting 25:14 28:14 | 22:16 24:19 25:23 26:3 29:15 31:6 reason 14:5 27:13 reasonable 30:8 REATH 4:13 recall 7:23 10:7 11:6,20 26:4 recipient 13:1 recipients 10:20 recognize 15:20 reconsideration 14:11 16:13 17:5,11 record 9:19 10:7 24:6,21 25:2 28:3 RED 3:22 redacted 20:17 refer 8:10 referenced 7:25 9:1 referred 9:7 21:9 regard 11:10 20:13 regarding 8:20 rehashing 24:10 relates 28:7,24 relation 7:2 20:8 relative 32:10,12 relevance 29:24 remainder 19:22 remaining 16:12 19:18 remember 26:11 26:13 REMOTE 1:5 2:11 report 20:8 Reporter 2:8 32:4 Reporting 1:19 representative 6:11 |
| P P 3:1,1 5:13 P.O 3:16 PA 4:1 PAPANTONIO 4:1 papers 26:9,16 27:3 28:1 PARFITT 3:10 PARK 4:15 particular 10:5 16:9 26:5 29:18 parties 32:11 patent 9:17 10:12 11:6 12:20 patents 10:2 PC 3:21 Pennsylvania 2:11 4:9 5:17 PENSACOLA 4:3 people 12:23 15:24 18:9 percent 21:21 | | | Q quash 22:9 29:4 29:11 question 7:8 8:8 25:7 26:8 quicker 30:15 quite 24:8 28:3 quote/unquote 6:11 | |
| | | | R R 3:1,4 5:13 32:1 RACHEL 5:15 RAFFERTY 4:1 raise 6:7 20:2 28:7 30:22,24 raised 9:4 19:2 raising 7:8 rarely 27:2 re-reviewing 16:11 read 9:24 24:16 26:15 27:25 real 18:20 really 9:25 10:9 14:12 16:1,4,7 16:10,18 21:25 | |

August 2, 2021

38

| | | | | |
|--|--|--|---|--|
| represented 10:6 request 11:8,12 11:16,22 17:14 26:14 reserved 7:21 8:21 resolved 22:24 resources 15:4 respect 10:4,12 12:3 16:9 20:9 respectfully 7:13 response 6:24 rest 6:13 20:14 result 7:22 RETIRED 1:14 rgoodman@m... 5:18 RHOADS 5:15 RICE 3:3 Rich 13:22 21:21 22:8 31:2 RICHARD 5:2 richard.berna... 5:8 right 11:14 12:10 13:17 23:21,25 29:7 31:5 ripe 28:16 rise 25:17 role 12:22 13:7 ROTH 3:21 routinely 27:16 rule 13:3 17:15 ruled 11:25 18:22 ruling 8:20 10:24 20:3,5 31:4 rulings 7:14 16:5 19:21 31:9 run 18:21 rush 18:7 | S S 3:1 4:7 5:13,13 SALES 1:6 sample 6:11 satisfied 11:16 satisfy 12:19,22 13:2 saw 8:17 schedule 6:18,19 23:6,20 24:2 30:7 Schneider 1:14 6:1,2 7:6 8:7 8:13 9:10 11:4 12:13,16 14:17 16:15,24 18:1 18:6,13 20:11 20:21,24 21:13 21:16,20 22:18 23:3,11,16,19 25:6,20 26:7 28:5 29:10,13 29:21 30:2,5 30:13,19,22 31:13,17 score 17:7 second 12:14 28:23 SEDAN 4:7 see 14:25 15:1 22:11,16 27:25 31:18 seeking 25:9 seen 15:2,3 31:7 sense 16:16 19:16,23 21:4 separate 25:19 September 22:20 23:5,5,7 served 28:10 set 32:8 shape 12:25 shared 20:17 SHARKO 4:14 short 16:17 | 18:17 Shorthand 32:4 side 24:6 simply 15:19 sitting 25:12 six 14:2 SKADDEN 5:2 skimming 26:12 SLATE 5:2 small 7:11 smart 12:23 17:4 smarter 12:24 smidgen 15:3 smoking 15:1 so-called 9:17 soon 31:5 sophisticated 17:4 sorry 9:20 12:14 13:19 sort 8:1 10:25 12:16 13:12 18:15 26:16 sounds 8:14,15 8:16 South 1:20 4:2 Special 1:14 6:1 6:2 7:6 8:7,13 9:10 11:4 12:13,16 14:17 16:24 18:1,6 18:13 20:11,21 20:24 21:13,16 21:20 22:18 23:3,11,16,19 25:6,20 26:7 28:5 29:10,13 29:21 30:2,5 30:13,19,22 31:13,17 spirit 8:2 10:13 11:2 spoke 21:2 spoliation 6:16 21:1,10,22 | squeeze 15:9 stage 28:15 starts 17:5,10 state 2:10 26:22 31:4 32:4,20 statement 22:12 states 1:1 25:8 25:11,15,21 26:23 STATUS 1:5 stenographica... 2:7 32:7 step 14:14 stipulations 28:19 STREET 3:10 3:16 4:2,8 5:16 strongest 13:4 strongly 24:8 27:24 struggle 15:18 study 25:7 26:9 subject 8:25 29:3,14,16 submission 16:17,20 19:7 submit 13:4 20:17 22:19 23:22,24 30:6 submits 12:21 subpoenas 22:6 22:9,24 23:2 24:9 substance 10:7,9 16:3 substantiate 10:4,18,25 suffice 28:24 suggest 13:10 SUITE 3:4 4:8 summary 26:13 26:18 support 13:4 sure 7:6 11:19 12:15 16:4 17:23 21:10,19 | 27:2 29:7 30:3 30:11 SUSAN 4:14 susan.sharko... 4:16 T T 5:2,13 32:1,1 tacks 16:22 take 7:11,25 8:4 13:12 22:3 taken 2:7 32:7 talc 26:19 TALCUM 1:5 talk 28:8 talked 31:2 team 11:19 tell 12:19,22 13:11 22:18 29:18 telling 13:6 terms 7:15 27:12 Terrific 9:10 testimony 32:6 thank 6:2 13:24 17:16,20 23:15 23:18 31:14,15 31:16 Thanks 24:4 Theresa 2:8 31:15 32:3,19 thing 14:11 17:6 17:11 28:7 31:1 things 17:24 19:4 21:24 29:2 think 7:3,7 9:8 10:6 11:4,11 11:14 12:18,22 14:18 15:4,23 16:17,19 17:24 18:2,10 19:7 19:18,22 20:6 21:4 22:17 23:21 24:11,22 |
|--|--|--|---|--|

August 2, 2021

39

| | | | | |
|--|--|---|--|--|
| 25:23,24 26:6 27:1 28:2,20 28:20 29:5 30:20,25 31:2 31:8,10 Third 26:20 thought 9:11 14:10 16:15 19:16 30:4 three 7:20 22:15 31:10 time 8:1 9:6 10:16 13:15 18:11,17,20 20:1 24:15,15 26:3 27:22,22 32:7 times 21:2,7 timing 28:8 TISI 4:2 told 7:4 18:17 top 9:14 track 18:18 transcript 2:6 8:18 32:6 trial 25:18 true 32:6 try 8:2 28:19 trying 17:22 22:10 30:25 turned 17:9 tweak 22:1 two 6:4 13:22 26:11 28:10 31:10 type 22:12 | unredacted 20:18 upside 23:14 USMJ 1:14 <hr/> V <hr/> V 4:2 variety 28:13 version 20:17,18 versions 19:4 versus 11:1 22:12 VIDEOCONF... 1:6 2:11 Videoconfere... 1:19 view 10:4 15:11 Viscomi 27:15 Visic 27:20 vs 26:21 <hr/> W <hr/> waiting 31:1 waiver 7:22 15:19,22 waiving 10:11 walk 7:4 WALKER 5:15 WALNUT 4:8 want 9:12 10:15 13:21 14:4,12 15:6,20 17:12 18:8,11 21:3 21:10 22:25 23:21 24:5,20 24:20 25:1 27:1,6,10 28:7 28:8 29:6,25 wanted 6:4,15 14:12 16:12 21:18 24:19 30:11 wants 30:24 WASHINGTON... 3:11 5:6 wasn't 8:8 | way 7:17 12:25 13:3 23:6 29:7 30:16,18 ways 9:2,7 we'll 6:18,18 10:13 13:13 18:21,22 19:4 19:13 20:5,7 20:11 23:20,25 27:8,23 28:3 28:19 29:24 30:17 31:18 we're 6:5,10 7:14 8:3 10:9 11:1 14:8 15:25 16:7 17:22,23 18:17 18:19 19:5,17 20:3,24 22:6 22:14 28:21 29:7 we've 19:6 25:16 27:3 30:20 Wednesday 23:5 week 29:9 weekend 23:10 23:14 weeks 20:7 22:15 welcome 17:13 went 9:23 White 1:20 Williams 26:21 willing 11:1 wish 7:11 11:18 15:12 withholding 16:6 withholdings 15:16 witness 28:14 Wolfson 17:1 won 17:7 words 10:25 17:21 27:1 work 18:9 19:6 | 22:10 30:10 working 12:23 22:7 28:18 29:8 works 24:2 world 23:13 worth 15:9 wouldn't 10:11 15:22 written 14:7 wrong 16:13 <hr/> X <hr/> XIO857 32:21 <hr/> Y <hr/> Yeah 23:3 years 25:1 28:16 29:19 YORK 5:6 <hr/> Z <hr/> Zoom 1:5 2:11 6:5 <hr/> 0 <hr/> 07701 3:22 07932 4:15 08002 3:5 08106 1:21 <hr/> 1 <hr/> 1 22:20 101 3:4 103 12:12 13:18 13:22 106 9:20,20 12:7 108 12:12 13:18 10th 23:9,23 126 9:21 12:7 127 3:22 1440 5:6 16 19:19 17 19:19 1735 5:16 17th 23:25 1825 3:10 | 19103-7505 5:17 19106-3697 4:9 <hr/> 2 <hr/> 2 1:11 32:21 20005 5:6 2006 3:11 202-371-7410 5:7 202-759-7648 3:12 2021 1:11 32:20 32:21 210 3:4 215-567-3500 3:23 215-567-6019 3:24 215-592-1500 4:10 215-592-4663 4:10 215-772-7411 5:17 215-772-7620 5:18 218 3:16 21st 5:16 26th 6:8 <hr/> 3 <hr/> 3:16-md-2738-... 1:2 30 29:19 30(b)(6) 24:9 28:11 29:11 30X100085700 2:9 316 4:2 32502 4:3 334-954-7555 3:18 36104 3:17 <hr/> 4 <hr/> 4:02 2:12 |
|--|--|---|--|--|

August 2, 2021

40

| | | | | |
|----------------|--------------|--|--|--|
| 4160 3:16 | 9 | | | |
| 46 7:20 8:6 | 973-360-9831 | | | |
| 5 | 4:16 | | | |
| 5 32:20 | 973-549-7350 | | | |
| 500 4:8 | 4:15 | | | |
| 51 9:20 12:7 | 99 7:20 | | | |
| 510 4:8 | | | | |
| 515 1:20 | | | | |
| 52 9:20 12:7 | | | | |
| 53 9:20 12:7 | | | | |
| 56 7:20 8:6 | | | | |
| 6 | | | | |
| 60 12:12 13:18 | | | | |
| 600 4:14 | | | | |
| 61 12:12 13:18 | | | | |
| 7 | | | | |
| 7 23:5 | | | | |
| 72 12:12 13:18 | | | | |
| 732-747-9003 | | | | |
| 3:23 | | | | |
| 8 | | | | |
| 8 23:5 | | | | |
| 800-277-1193 | | | | |
| 4:4 | | | | |
| 800-674-9725 | | | | |
| 3:11 | | | | |
| 800-768-4026 | | | | |
| 3:6 | | | | |
| 800-898-2034 | | | | |
| 3:17 | | | | |
| 850-435-7000 | | | | |
| 4:3 | | | | |
| 856-488-7797 | | | | |
| 1:15 | | | | |
| 856-546-1100 | | | | |
| 1:22 | | | | |
| 856-667-0500 | | | | |
| 3:5 | | | | |
| 856-667-5133 | | | | |
| 3:6 | | | | |
| 877-882-1011 | | | | |
| 4:9 | | | | |